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problem of dealing with that occasional judge who suffers from a physical or mental disability or whose conduct has been interfering with the effective and expeditious administration of the business of the courts. I would like to thank the able Senator from Arizona (Mr. DeCONCINI) for the fine work which he has done in enacting compromise legislation into law.

Mr. President, I wholeheartedly support the amendment offered by my able colleague from Arkansas. This amendment would have the salutary effect of requiring the federal courts to undertake a more careful and thorough review of agency rulemaking. One of the major changes which this provision will make is to remove the presumption of regular or validity which courts have traditionally accorded agency decisionmaking.

I urge my colleagues to support this provision which makes several excellent changes in the judicial review section of the Administrative Procedures Act.

Mr. MATHIAS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the motion of the Senator from Arizona.

(Putting the question.)

The motion was agreed to.

Mr. DeCONCINI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FOREIGN SERVICE ACT OF 1980— CONFERENCE REPORT

Mr. PELL. Mr. President, I submit a report of the committee of conference on H.R. 6790 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. BAKER. Mr. President, we have no objection to proceeding to the consideration of this conference report. I need to be assured that there will be a few moments for debate. I have one Senator on his way to the Chamber who wishes to speak on this subject.

But, with that reservation, I advise my friend from Rhode Island that we have no objection to the consideration of this conference report.

The PRESIDING OFFICER. Without

objection, the Senate will proceed to the consideration of the conference report. (The conference report is printed in the House proceedings of the RECORD of September 29, 1980.)

Mr. PELL. Mr. President, in 1976, Congress enacted my amendment (section 117) to the Foreign Relations Act of 1976 (Public Law 94-350) which called on the Secretary of State to "transmit to Congress a comprehensive plan for the improvement and simplification of the Foreign Service personnel system . . ." In response to this provision, the administration submitted in 1979 a draft bill reflecting the results of a 3-year executive branch study initiated under the Ford administration.

This bipartisan effort which has been endorsed by three Secretaries of State (Kissinger, Vance, and Muskie) represents a major rewrite of the Foreign Service Act of 1946. This legislation (H.R. 6790) is necessary:

To provide a clear distinction between Foreign Service and civil service employment, and to convert to civil service status without loss those Foreign Service personnel who are obligated and needed only for domestic service;

To improve efficiency and economy by simplifying and rationalizing the various categories of Foreign Service personnel and by establishing a single Foreign Service personnel salary schedule;

To establish a Senior Foreign Service (SFS) with rigorous entry, promotion, and retention standards based on performance;

To make more uniform the statutory terms and conditions of Foreign Service employment based on merit principles;

To provide a statutory basis for labor-management relations in the Foreign Service;

To consolidate and codify the various laws relating to Foreign Service personnel which have been enacted both within and outside the framework of the existing Foreign Service Act;

To improve interagency coordination by promoting compatibility among the personnel systems of the agencies employing Foreign Service personnel and with those of other departments and agencies.

This bill will strengthen the professional character of the Foreign Service by:

First, limiting Service status to those who accept its discipline including the obligation to serve anywhere in the world often under dangerous or unhealthy circumstances;

Second, requiring that all persons seeking career status pass successfully obligation to serve anywhere in the world through a strict but fair tenuring process; and

Third, establishing closer links between performance and promotion, compensation and retention in Service.

The bill will also improve the management of the Foreign Service and promote economy and efficiency by reducing

the number of personnel categories under a single pay schedule, establishing a Senior Foreign Service comparable to the Senior Executive Service of the Civil Service, and by encouraging interchange and maximum compatibility of personnel systems among the foreign affairs agencies.

This legislation has been the subject of extensive consultations. Its provisions reflect comments and suggestions which have been received from the members of the Foreign Service and the employee organizations which represent them, from interested agencies within the executive branch and from three separate committees of Congress.

All in all, the conference report represents a fair accommodation on all of the controversial issues. I ask unanimous consent that the statement of managers be printed in the RECORD.

Mr. President, I urge my colleagues to support the conference substitute.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6790) to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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"The depth of this concern is revealed dramatically in the words of the inhabitants of Boston in the "List of the Infringements and Violations of the Rights of the Colonists":

This will if accomplished compleat our slavery. For if taxes are raised from us by the Parliament of Great Britain without our consent, and the men on whose opinions and decisions our properties, liberties and lives in a great measure depend, receive their support from the Revenues arising from these taxes, we cannot, when we think on the depravity of mankind, avoid looking with horror on the danger to which we are exposed? The British Parliament have shewn their wisdom in making the Judges there as independent as possible both of the Prince and People, both for place and support: But our Judges hold their Commissions only during pleasure; the granting them salaries out of this Revenue is rendering them dependent on the Crown for their support. . . . How alarming it must then be to the Inhabitants of this Province, to find so wide a difference made between the Subjects in Britain and America, as the rendering the Judges here altogether dependent on the Crown for their support.

Reprinted in Smith, *supra*, note 10 at 1145.

¹² See generally, Ferrick, "Impeaching Federal Judges: A Study of the Constitutional Provisions", 39 Ford. L. Rev. 1 (1970).

¹³ Specifically, on August 27, 1787, Mr. Dickinson proposed that federal judges be removable by the Executive on the application of the Senate and House of Representatives. The motion was defeated by a vote of seven States to one. 2 M. Farrand, "The Records of the Federal Convention of 1787" at 428-29.

¹⁴ 2 Farrand, *supra* note 13 at 550.

¹⁵ Ervin, "Separation of Powers: Judicial Independence", 35 Law and Contemp. Prob. 108, 121.

¹⁶ 1 Farrand, *supra* note 13 at 550.

¹⁷ 1969 Sup. Ct. Rev. 135, 153.

¹⁸ 398 U.S. at 136.

¹⁹ *United States v. Nixon*, 418 U.S. 683, 704 (1974).

²⁰ Senate Rept. 96-362, "The Judicial Conduct and Disability Act of 1979", at 5.

²¹ Judicial Conference resolution of Mar. 9, 1979 (Report of the Judicial Conference of the United States, 1979 at 4-7).

²² My comments regarding the actions of the judicial councils should not be read necessarily as an endorsement of the constitutionality of such procedures; rather they are merely in recognition of the fact that these procedures are in effect and should not be curtailed by the enactment of legislation of dubious constitutionality.

²³ Letter by Gerald Gunther to Charles McC. Mathias, Jr., October 25, 1979.

Mr. MATHIAS. Mr. President, although the article dealt with the Senate-passed version of S. 1873, many of the arguments set forth are equally applicable to the amendment now before us.

Mr. President, I think that the case is clear. I hope that the Senate will reject this measure overwhelmingly.

Mr. DECONCINI. Mr. President, I appreciate the concern of the Senator from Maryland in this matter and I know from his constitutional experience and his legal ability that it comes from a strong feeling in the preservation of the constitutional points raised.

Although I disagree with his conclusions here, I respect his judgment, and I thank him for permitting the Senate to work its will on this substitute.

At this time I yield to the Senator from Utah.

Mr. HATCH. I thank my dear friend from Arizona.

Mr. President, this particular act, entitled Judicial Conduct and Disability Act of 1979, is an excellent, moderate approach toward solving some of the major problems we have in our judicial system in our country today.

I compliment the distinguished Senator from Arizona for the work he has put forth with regard to this bill.

I also have great respect for the opinions of the Senator from Maryland who has fought very much against this bill during the time that it has been before our committee. He has raised many, many provocative and worthwhile thoughts to the extent that this bill is an outgrowth from the prior bill which may have gone too far.

Perhaps coming from Utah and having lived in a State and having practiced law before a judge who many thought was so powerful that he just could not be corrected, who did do a number of things that were biased and prejudiced, partial, and who did treat attorneys with disdain in his courtroom, gave out sentences which were in many cases inadequate and in other cases more than adequate, who did not show equal treatment before the law but yet was able to control the Federal judiciary for years, perhaps I have a little more feeling about this particular bill than most.

I believe that this bill is a moderate and reasonable approach toward solving some of the problems that arise on the Federal bench. It is said that the closest thing to Godhood in this life is becoming a Federal judge, district, circuit, or otherwise, and in that particular case and in those particular contexts many people have justified that particular statement.

I believe that if we are going to have some reasonable way short of convening Congress to discipline judges this is as reasonable and moderate an approach as we can have.

I endorse it, I support it, and I hope that it will lead to a better Federal judiciary with very few complaints not being satisfied by the judicial council of the circuit in which the judge serves rather than through the process of impeachment before Congress.

I am grateful for the efforts of all those who have worked hard on this legislation, particularly the Senator from Arizona.

Mr. DECONCINI. Mr. President, I thank the distinguished Senator from Utah for his support of this action and also the ranking minority member, the Senator from South Carolina, on the Judiciary Committee, along with the chairman, and the chairman's staff person who has worked and labored in this, Mr. Ken Feinberg deserves thanks, along with Mike Altier and Ann Woodley of my staff.

I must mention that Congressman KASTENMEIER, the chairman of the subcommittee of the House of Representatives, put in a great deal of effort trying to find a compromise, and Mike Remington of his staff has been extremely helpful.

Mr. President, I also point out at this time that this is indeed a compromise that I believe has widespread support now. The American Bar Association supports it. The Department of Justice now supports it wholeheartedly. The Judicial Conference of the United States supports this. It was passed unanimously by the House of Representatives.

Mr. President, if there be no further discussion, I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. DECONCINI. I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, the Senator from Utah has given us a classic example of the old adage in law that hard cases make bad law.

I do not dispute any of the statements that he has made about a particular situation and a specific judge, but I only comment that to alter a very basic principle of the constitutional system of this Republic for that reason is inadequate reason and I hope the Senate will not do it.

For this reason, I shall vote against this measure.

Mr. DECONCINI. Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I would like to express my support for S. 1873, the Judicial Conduct and Disability Act of 1979. I am a cosponsor of this piece of legislation along with a number of my colleagues from the Judiciary Committee.

S. 1873 establishes a simple, yet effective procedure for the processing of allegations that members of the Federal Judiciary are not efficiently performing their duties by reason of physical or mental disability or that they have engaged in conduct inconsistent with the effective and expeditious administration of the business of the courts.

S. 1873 would, I believe, be effective in two ways. First of all, as the committee report points out, there are situations where the disability or misconduct involved does not rise to the level of an impeachable offense. S. 1873 provides clear statutory authority for a number of other intermediate sanctions which will give needed flexibility to the judicial council to find solutions in these instances. Second, while impeachment is admittedly a cumbersome and time-consuming process, S. 1873 would serve to isolate the most serious instances of misconduct and to actually set before the House of Representatives a record of proceedings revealing misconduct which might constitute an impeachable offense. I think it is likely that the existence of such procedures would provide an incentive for Congress to take appropriate action where no such incentive has previously existed.

I urge my colleagues in the Senate to support the conference report on S. 1873, the Judicial Conduct and Disability Act. I believe that S. 1873 is constitutional, that it is necessary, and that it will not compromise the independence of the Federal judiciary. This legislation takes a reasonable, moderate approach to the

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OBJECTIVE OF GRIEVANCE SYSTEM

The House bill provided that an objective of the bill is to maintain a fair and effective system for the resolution of individual grievances.

The Senate amendment contained the same provision, and added that the grievance system should be one that will insure the fullest measure of due process for the members of the Foreign Service.

The conference substitute in section 101 (b) (4) incorporates the Senate amendment.

LANGUAGE COMPETENCE

The House bill contained provisions describing the following:

(1) The characteristics that should be found in the Senior Foreign Service;

(2) The types of examinations which may be presented for appointment to the Foreign Service;

(3) The criteria under which a career candidate can be initially appointed to a class higher than class 4; and

(4) The records of ability and performance which may be examined by selection boards.

The Senate amendment added an explicit reference to foreign language competence in each of the above-described provisions.

The conference substitute in sections 101 (b) (7), 301(b), 307(1), and 603(a) incorporates the Senate amendment.

LANGUAGE COMPETENCE REPORT BY CHIEF OF MISSION

The Senate amendment added a new section requiring that each chief of mission report to Congress, within 6 months after assuming his or her post, on the foreign language competence of the chief of mission and the mission staff in the principal language or other major dialect of the country where the post is situated.

The House bill contained no comparable provision.

The conference substitute is the same as the Senate amendment, but the provision has been added as a new section 304(b) (3) for organizational reasons. The committee of conference notes that this requirement is intended to apply only to posts in countries in which English is not the principal language.

OPERATING RESPONSIBILITIES OF THE INSPECTOR GENERAL

The House bill prohibited the Secretary of State from assigning any program operating responsibilities to the Inspector General of the Department of State and the Foreign Service.

The Senate amendment added the word "general" before the term "program operating responsibilities."

The conference substitute in section 209 (a) (1) is the same as the Senate amendment.

ASSISTANT INSPECTORS GENERAL

The House bill required the Inspector General to appoint two assistants, one responsible for supervising auditing activities and one responsible for supervising investigative activities.

The Senate amendment contained no comparable provision.

The conference substitute is the same as the Senate position.

PERFORMANCE EVALUATION OF EMPLOYEES ASSIGNED TO THE INSPECTOR GENERAL

The House bill required that the Inspector General prepare the performance evaluation reports on State Department employees and

members of the Foreign Service who are assigned to the Office of the Inspector General.

The Senate amendment permitted such reports to be prepared either by the Inspector General or by the Inspector General's designee.

The conference substitute in section 209 (e) (2) is the same as the Senate amendment.

PERSONAL RANK OF AMBASSADOR OR MINISTER

The House bill authorized the President to confer the personal rank of ambassador, for a period not exceeding 6 months, on an individual who is undertaking a special mission for the President. The bill requires the President to submit an advance report to the Senate Committee on Foreign Relations each time he intends to confer such a rank.

The Senate amendment contained a similar provision and added the following:

(1) A restatement of the Constitutional prohibition against any appointment of an ambassador or minister without the advice and consent of the Senate, other than by recess appointment; and

(2) A requirement that the President submit a report when conferring the personal rank of ambassador or minister at least 30 days in advance of the conferral.

The conference substitute in section 302(a) (2) (B) is similar to the Senate amendment but adds language permitting exceptions to the 30-day advance notice requirement in urgent cases.

REPORTS ON DEMONSTRATED COMPETENCE OF CHIEF OF MISSION NOMINEES

The Senate amendment required the President to provide to the Senate Foreign Relations Committee a report on the demonstrated competence of each person nominated for appointment as a chief of mission.

The House bill contained no comparable provision.

The conference substitute in section 304(a) (4) is identical to the Senate amendment.

REGULATION OF EMPLOYMENT OF FAMILY MEMBERS AT FOREIGN SERVICE POSTS ABROAD

The Senate amendment required the Secretary of State to issue regulations governing all Federal agencies' employment at Foreign Service posts abroad of family members of all Government personnel.

The House bill contained no comparable provision.

The conference substitute contains no provision on this issue.

FOREIGN SERVICE SALARY SCHEDULE

The House bill established a 10-class Foreign Service salary schedule, with each class corresponding to a specified grade in the General Schedule. Each class was required to have 14 salary steps.

The Senate amendment authorized the President to establish a 9-class Foreign Service salary schedule with a maximum salary rate not exceeding the maximum rate for GS-15 of the General Schedule. However, the Senate amendment did not establish specific linkages between the Foreign Service Schedule and General Schedule for the various salary classes.

The conference substitute in section 403 adopts the Senate amendment. The committee of conference understands that the pay schedule reproduced below will be implemented by the President, effective the first day of the first pay period beginning on or after October 1, 1980, under the author-

ity provided to the President under the Federal Pay Comparability Act of 1970 (5 U.S.C. 5301 et seq.). The new pay schedule represents a compromise between the pay option adopted by the House and that initially supported by the Administration. The \$27.4 million proposal contains nine salary classes as do the present pay schedules for the Foreign Service. The September 24, 1980 letter from the Deputy Director of the Office of Management and Budget to the chairmen of the various committees follows, together with charts indicating the new linkages, comparative details among various pay options and the intergrade differentials between salary classes in the new option:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, D.C., September 24, 1980.

DEAR MR. CHAIRMAN: This letter is to advise you that the Administration strongly prefers the Senate provisions in Sections 403, 406 and 2101, regarding Foreign Service compensation, in H.R. 6790, the proposed Foreign Service Act of 1980. It also provides you with an up-dated Foreign Service pay schedule that the President would authorize in implementation of those Sections of H.R. 6790. As you can see, the attached up-dated schedule sets forth considerably higher linkages between the Foreign Service and the General Schedule than the one I provided you in my letter of April 1.

We believe that it is absolutely essential for the President to have authority to set the linkage between the FS and GS pay systems in order for him to carry out his responsibility for the management of the statutory pay systems in the executive branch. Duties and responsibilities for positions compensated under the FS and GS pay systems change from time to time, necessitating changes in linkage points. The Congress has recognized the need for continued attention to matters of this type in granting the President authority over linkages under the Federal Pay Comparability Act. We believe it inappropriate to take that authority from the President.

The higher linkages which the President would implement, under the provisions of the Senate-passed bill, take into consideration the critical concerns expressed both in the Senate and House. This proposal would make a one-time increase in FS pay that averages \$2,570 a year or 9.6 percent, effective in the first pay period and with conversion to the new schedule on a step for step basis, at a cost of approximately \$27.4 million annually. Compounded with the forthcoming October 1 Federal pay increase of 9.1 percent, FS pay would go up an average of 19.6 percent this year. The Administration believes that this proposal provides for a sound compensation system for the Foreign Service. At the same time, it is the largest increase that can be provided under a fair assessment of comparability between the FS and the GS systems.

Accordingly, we strongly urge enactment of Sections 403, 406 and 2101 of the Senate-passed bill instead of the House-passed version of those sections.

The Administration's positions on other differences between the Senate and House bills have been conveyed by staff of the State Department to staff of your Committee.

Sincerely,

JOHN P. WHITE,
Deputy Director.

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LINKAGE PROVIDING COMPARABILITY BETWEEN THE FOREIGN SERVICE AND THE GENERAL SCHEDULE

Current grade	Current linkage	Current 1st step pay ¹	New grade	New linkage	New 1st step pay ¹
FSO/RU-3	GS-14.40	GS-14.40	FS-1	GS-15	GS-15.00
4	GS-13	GS-13.00	2	GS-13.71	GS-13.71
5	GS-11.76	GS-11.76	3	GS-12.43	GS-12.43
6	GS-10.38	GS-10.38	4	GS-11.28	GS-11.28
7	GS-9.54	GS-9.54	5	GS-9/step 2	GS-9.34
8	GS-7	GS-7.00	6	GS-8.20	GS-8.20
FSS-1	GS-14.40	GS-14.40	1	GS-15	GS-15.00
2	GS-13.00	GS-13.00	2	GS-13.71	GS-13.71
3	GS-11.76	GS-11.76	3	GS-12.43	GS-12.43
4	GS-10.38	GS-10.38	4	GS-11.28	GS-11.28
5	GS-9.22	GS-9.22	5	GS-9/step 2	GS-9.34
6	GS-8.10	GS-8.10	6	GS-8.20	GS-8.20
7	GS-7.02	GS-7.02	7	GS-7.10	GS-7.10
8	GS-5.98	GS-5.98	8	GS-6.03	GS-6.03
9	GS-4.97	GS-4.97	9	GS-5	GS-5.00
10	GS-4	GS-4.00	9	GS-5	GS-5.00

¹ Approximate.

COMPARATIVE DETAILS AMONG VARIOUS PAY OPTIONS

Current class	New class	Current linkages	House bill	Pay options		Compromise ¹
				I	II	\$27.4 option ¹
0-3	FS-1	GS-14.40	GS-15	GS-15	GS-15	GS-15
0-4	FS-2	GS-13	GS-14	GS-14	GS-14	GS-13.71
0-5	FS-3	GS-11.76	GS-13	GS-13	GS-12.5	GS-12.43
0-6	FS-4	GS-10.38	GS-12	GS-12	GS-11	GS-11.28
0-7	FS-5	GS-8.54	GS-11	GS-11	GS-9	GS-9.34
S-5	FS-6	GS-9.22	GS-9	GS-9	GS-8.20	GS-8.20
0-8	FS-6	GS-7	GS-8	GS-7	GS-7	GS-7.10
S-6	FS-7	GS-8.10	GS-7	GS-6	GS-6	GS-6.03
S-7	FS-7	GS-7.02	GS-7	GS-5	GS-5	GS-5
S-8	FS-8	GS-5.98	GS-6	GS-4	GS-4	GS-4
S-9 and 10	FS-9	GS-4	GS-5	GS-4	GS-4	GS-4
Cost in millions			\$34.1	\$33.8	\$29	\$27.4

OPTION AT \$27,400,000

Current	New	Step 1 rates	GS equivalents	Intergrade differentials (percent)	Current	New	Step 1 rates	GS equivalents	Intergrade differentials (percent)
SO/RU-3, FSS-1	FS-1	40832	GS-15.00	23.41	SO/RU-8, FSS-6	FS-6	15737	GS-8.20	11.85
SO/RU-4, FSS-2	FS-2	33086	GS-13.71	23.41	SS-7	FS-7	14058	GS-7.10	11.85
SO/RU-5, FSS-3	FS-3	26810	GS-12.43	23.41	SS-8	FS-8	12576	GS-6.03	11.85
SO/RU-6, FSS-4	FS-4	21724	GS-11.28	23.41	SS-9, FSS-10	FS-9	11243	GS-5.00	
SO/RU-7, FSS-5	FS-5	17603	GS-9.34	11.85					

In adopting the Senate amendment, the committee of conference accepts, for the time being, the administration's September 24 proposal as an urgently needed first step in moving toward adequate pay for the Foreign Service. The Federal Pay Comparability Act of 1970 requires the President to establish appropriate linkages among the various Government pay schedules and between those schedules and the private sector. It is clear that recent administrations have failed to bring Foreign Service pay in line with other pay scales. The conferees are not convinced that this proposal achieves the statutory mandate of pay equality. It does, however, move in the right direction.

In setting pay levels for the Foreign Service, the President should take the following special characteristics of Foreign Service duty, among others, into account: (a) the requirement that any member of the Foreign Service serve in any country to which he or she is assigned; (b) the extraordinary threat to personal safety in peacetime as well as in war; (c) the continual scrutiny of Foreign Service members and their families by foreign audiences; and (d) the accountability of the Foreign Service for the actions of the United States abroad.

WITHIN-CLASS SALARY INCREASES

The House bill provided that members of the Foreign Service paid under the Foreign Service Schedule shall receive within-class step advances after 52 weeks of service in each of the first 9 steps of each class and after 104 weeks of service in steps 10 through 13. The provision also authorizes denial of within-class salary increases by selection boards based on inadequate performance and additional step increases by the agency head based on especially meritorious service.

The Senate amendment contained a similar provision, but did not specify the frequency of within-class salary increases. Instead, it authorized the increases to be granted at periodic intervals leaving the time period to be set by agency regulation.

The conference substitute in section 406 is the same as the House provision.

PREMIUM PAY FOR FOREIGN SERVICE OFFICERS

The House bill in section 412 authorized the Secretary to pay special differentials to Foreign Service officers required to perform additional work on a regular basis in substantial excess of normal requirements. However, such a differential would not be payable with respect to work for which additional

compensation is payable under the premium pay provisions in title 5, United States Code, Section 2304 of the House bill amended title 5, United States Code, to authorize premium pay for Foreign Service officers other than members of the Senior Foreign Service, as was the practice prior to October 1, 1978.

The Senate amendment was designed to prevent junior FSO's from receiving premium pay. However, the amendment also continued special differentials for Foreign Service officers assigned additional work. Section 2304 of the Senate amendment continued the existing exclusion from premium pay of Foreign Service officers, but specified that compensatory time off could be provided.

The conference substitute in sections 412 and 2304 adopts the Senate amendment but adds language requiring reports to be made to the Committee on Foreign Affairs and the Committee on Foreign Relations should limitations be placed on the dollar amounts of special differentials or the number of people to whom they can be paid.

REPORTS TO CONGRESS ON ASSIGNMENTS ABOVE OR BELOW PERSONAL RANK

The Senate amendment in section 502 required an annual report to Congress on Foreign Service personnel assigned to positions classified more than one grade higher or lower than the personal rank of the individuals assigned to those positions.

The House bill contained no comparable provision.

The conference substitute in section 2402 adopts the Senate amendment.

FOREIGN SERVICE AWARDS

The Senate amendment directed the President to establish a program of Foreign Service awards recognizing distinguished, meritorious service to the Nation by members of the Foreign Service, including extraordinary valor in the face of danger to life or health.

The House bill contained no comparable provision.

The conference substitute in section 613 is the same as the Senate amendment. The committee of conference notes that since current law provides for monetary awards, these new Foreign Service awards will not be monetary.

CAREER DEVELOPMENT

The House bill in section 703(c) directed the Secretary in general terms to design training programs to encourage and foster

career development for members of the Foreign Service.

The Senate amendment in section 703(b) directed the Secretary in more specific terms to establish a professional development program for the members of the Foreign Service throughout their careers, and described the emphasis that should be given in this program at various career stages.

The conference substitute incorporates the Senate amendment as a new section 703 which deals exclusively with career development. The substitute also adds language emphasizing training in management skills.

MANDATORY RETIREMENT

The House bill raised the mandatory retirement age for participants in the Foreign Service and Disability system from 60 to 65.

The Senate amendment retained the existing law's mandatory retirement age of 60.

The conference substitute in section 812 is the same as the House provision. The committee of conference notes that this new requirement reflects the advances made since 1946 in such areas as life expectancy, availability of health care facilities, and transportation. The retention of a mandatory retirement age is deliberate and reflects the demonstrated correlation between advanced age and overseas assignability of members of the Service. In view of the strong reaffirmation of the requirement of worldwide availability for members of the Foreign Service, the problem of assignability will not lessen appreciably.

FORMER SPOUSE ANNUITY

The House bill authorized courts to divide retirement and survivor's benefits between participants and former spouses, thereby expanding existing law to allow court division of survivor's benefits.

The Senate amendment provided for a pro rata division of retirement and survivor benefits between a participant in the Foreign Service Retirement and Disability System and his or her former spouse, provided for court modification of any pro rata division, and mandated a joint election of the participant and his or her spouse or former spouse for any waiver of survivor's benefits.

The conference substitute adopts the Senate amendment with three modifications. First, the effective date provision (section 2403(e)(2)) is revised to provide that the provisions relating to the rights of former spouses to receive survivor annuities shall

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apply only in the case of individuals who become former spouses after the effective date of this bill (February 15, 1981). Second, a new provision is added to permit an individual who, prior to the effective date of the bill, had a former spouse, to elect to provide a survivor benefit for that former spouse (section 2109). Third, new provisions are added to permit the parties to enter into a spousal agreement with respect to their respective rights under chapter 8. Such an agreement will be given the same effect as a court order, and thus the parties may adjust their respective rights without the necessity of obtaining such an order.

LIMIT ON TOTAL COMPENSATION OF REEMPLOYED ANNUITANTS

The House bill continued existing law limiting the annuity payable to a reemployed Foreign Service annuitant to that portion which, when combined with the salary of the position in which reemployed, does not exceed in any year the basic salary of the member on the date of retirement from the Foreign Service.

The Senate amendment permitted the reemployed annuitant to receive and retain so much of his or her annuity which when combined with the salary of the position in which reemployed, does not exceed in any year the current equivalent of the salary for the class from which the member retired.

The conference substitute in section 824 is the same as the House provision.

USE OF UNITED STATES PRODUCTS IN REPRESENTATION

The Senate amendment directed the Secretary, to the maximum extent practicable, to provide for the use of United States products, including American wines, in the exercise of representational functions.

The House bill contained no comparable provision.

The conference substitute in section 905 is the same as the Senate amendment.

ADMINISTRATIVE LEAVE IN GRIEVANCES

The House bill in section 1103(b) provided that the grievant and any representative of the grievant or witness in a grievance proceeding who is a member of the Service or employee of the Department shall be given reasonable periods of administrative leave.

The Senate amendment contained similar provisions, but also provided that any witness or representative who is under the control, supervision or responsibility of the Department shall be given administrative leave.

The conference substitute in section 1103 (b) (3) and 1103(c) is the same as the House provision.

REPRESENTATION IN GRIEVANCE PROCEEDINGS

The House bill in section 1103(b) (1) required that a grievant who is a member of a bargaining unit represented by an exclusive representative be represented by that exclusive representative in grievances, other than those relating to separation from the Foreign Service.

The Senate amendment provided that every grievant has the right to a representative of his or her own choosing in every grievance.

The conference substitute incorporates the Senate amendment, with an amendment providing the exclusive representative with the right to appear at all grievances involving members of the bargaining unit.

The committee of conference notes that section 1014 of the bill provides for settlement of disputes between management and the exclusive representative over the implementation of collective bargaining agreements. These procedures include appeals to the Foreign Service Grievance Board of issues similar to those presented to the Grievance Board in individual cases.

The conferees note that the Senate and House versions of chapter 10 did not differ. The chapter 10 provisions resulted from an

amendment adopted in subcommittee in the House which was modeled after title VII of the Civil Service Reform Act of 1978. The conferees wish to make clear that chapter 10 is to be interpreted consistent with the legislative history of the Reform Act, except where a specific departure is provided in the bill. As an example of a departure, the bill excepts from the duty to bargain multi-agency responsibilities (such as the Uniform Standardized Regulations issued under 5 U.S.C. 5921-25) as well as those meeting the strict definition of "Government-wide". On the other hand, with respect to negotiated procedures the bills are consistent and reflect the conference report to accompany the Civil Service Reform Act of 1978 (S. Rept. 95-1272, p. 158), which stated that the standard for determining whether a proposal is nonnegotiable is whether it "prevents the agency from acting at all". Consistency with labor-management relations policy in the domestic Civil Service led the conferees to adopt generally the Senate approach on the issue of representation before the Grievance Board which is discussed above.

PAY AND BENEFITS PENDING CONVERSION

The House bill provided for interim conversion to the new Foreign Service salary schedule and Senior Foreign Service salary rates of Foreign Service personnel on the rolls immediately before the effective date of the act, including those likely to be converted to the Civil Service under section 2104. It also provided for an effective date for such pay conversion earlier than the effective date of the act.

The Senate amendment permitted the immediate pay conversion of all Foreign Service officers to the new pay system, as well as those reserve and staff personnel who are determined to be available for worldwide assignment. The amendment provided for salary conversion of those Foreign Service personnel in the domestic category to the appropriate grade and step in the General Schedule, subject to a retroactive salary adjustment if there was a subsequent determination of an erroneous designation.

The conference substitute in section 2101 incorporates the House provision with a conforming change.

CONVERSION OF DOMESTIC PERSONNEL IN ICA

The House bill in section 2104(b) provided that the beginning of the 3-year period for conversion to Civil Service status of individuals in the Foreign Service who are not available for worldwide assignment be deferred until July 1, 1981 with respect to individuals in ICA who are covered by a collective bargaining agreement. Prior to that date the affected personnel retain their current status.

The Senate amendment contained no mandatory conversion requirement applicable to domestic Foreign Service personnel in the International Communication Agency.

The conference substitute is the same as the House provision with a conforming change to provide for immediate pay conversion.

PEACE CORPS USE OF FOREIGN SERVICE AUTHORITIES

The House bill authorized the President to continue to utilize the Foreign Service personnel authorities for the Peace Corps.

The Senate amendment limited the President's authority to utilize the Foreign Service authorities in the Peace Corps to individuals who performed duties which reasonably required availability for worldwide assignment.

The conference substitute in section 2202 (b) (2) is identical to the House provision.

STATUS OF CHAIRMAN OF THE OECD DEVELOPMENT ASSISTANCE COMMITTEE

The Senate amendment provided that the chairman of the OECD's Development Assistance Committee, who is appointed and paid under the Foreign Assistance Act of 1961, is

to be considered an employee of the U.S. Government for the purpose of any benefit under any law administered by the Office of Personnel Management.

The House bill contained no comparable provision.

The conference substitute in section 2203 (d) is similar to the Senate amendment, but states that the chairman is to be treated as a Federal employee for purposes of workmen's compensation, retirement, and health and life insurance coverage only.

MODEL FOREIGN LANGUAGE COMPETENCE POSTS

The House bill in section 2207 directed the Secretary of State to designate at least two Foreign Service posts in non-English speaking countries at which all employees permanently assigned will be required to possess an appropriate level of language competence. Exceptional assignments of individuals not having such competence are authorized to meet unanticipated exigencies.

The Senate amendment contained no comparable provision.

The conference substitute in section 2207 is identical to the House provision.

RETIREMENT FOR BINATIONAL CENTER EMPLOYEES

The Senate amendment in section 2207 provided that any individual appointed as a Binational Center Grantee who completed 5 years satisfactory service as a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the Foreign Service Retirement and Disability System and make appropriate contributions, including reimbursements, to the fund under provisions of the act.

The House bill contained no comparable provision.

The conference substitute in section 803 (c) is identical to the Senate amendment with certain conforming changes.

RETIREMENT CREDIT FOR "RADIO" EMPLOYEES

The Senate amendment provided that Civil Service retirement credit be allowed Federal employees who served in Radio Free Europe, Radio Liberty, Radio Free Asia, the Asia Foundation, or the Armed Forces Network, for the period of such service.

The House bill contained no comparable provision.

The conference substitute in section 2315 is similar to the Senate amendment with certain technical and conforming changes. The committee of conference does not intend this provision or the previous provision concerning Binational Center Grantees to set a precedent for Civil Service or Foreign Service retirement credit for any other non-Federal service.

EFFECTIVE DATE

The House bill provided that the act shall take effect 90 days after enactment, subject to certain exceptions with respect to personnel actions based on the current Foreign Service evaluation cycle, appointments to the Senior Foreign Service by the Secretary of Commerce, and mandatory retirement.

The conference substitute in section 803(c) is identical to the Senate amendment with certain conforming changes.

The conference substitute in section 2403 adopts an effective date of February 15, 1981 for the bill in general, and retains the House provision's exception regarding mandatory retirement (effective on date of enactment), the current Foreign Service evaluation cycle, and Senior Foreign Service appointments by the Secretary of Commerce. It also reflects the agreement of the committee of conference concerning the prospective application of provisions regarding annuities for former spouses, and the effective date of pay conversion, described above.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

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The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, even though I participated in the deliberations of the conference I cannot support the adoption of its report. While the conference expeditiously resolved the disagreements between the Senate and the House versions of the legislation, the issues available for resolution were not sufficient, even when resolved, to constitute equitable reform of the Foreign Service system. Consequently, as I say, I cannot support the final proposal.

The fundamental flaw of the proposed legislation is the creation of the Senior Foreign Service. A rank-in-person system for the higher grades basically is incompatible with the traditional career-consistent rank-in-person concept which has applied heretofore. The traditional system, modeled on the Navy's career system terminating in flag officer command, had produced some of the most outstanding foreign service officers in the past.

The new Senior Foreign Service officer system is borrowed from the Civil Service Senior Executive Service. While the concept may have some possible utility in the Civil Service, with its largely rank-in-job categories, the new Senior Foreign Service system produces a harmful breach in the traditional service with its eclectic and derivative standards. For this reason, it is likely to lead to an unfortunate politicization of the Service, not only in the partisan political party sense, but also more importantly in its establishing an eclectic corps, looking to its own constituency and power, rather than the service of the United States.

This danger is made administratively more likely by the layering through this provision of a new bureaucratic organization on top of, and different from, the remainder of the Foreign Service. Indeed, a careful analysis of this new Senior Foreign Service reveals it to be a new insulated so-called elite group, able to perpetuate itself at will by devices it can employ to negotiate with the Secretary of State. These devices can lead to rewarding conformists to the group and punishing innovative and creative critics.

The reason for this new Senior Foreign Service can be found in the distortions in selection-out in the traditional foreign service introduced by the Department of State. While the selection out and promotion system worked extremely well at the International Communications Agency, acting under the 1946 Foreign Service Act, it was bogged down in the State Department, particularly in the higher grades. In the State Department Foreign Service classes 1 and 2, for example, there is an overcomplement of 314 officers out of 1,550 in the corps—that is to say, there are, by the Department's own reckoning, only 1,236 jobs that require the services of the two top classes of officers.

The solution of the administration was to continue to disregard the 1946 statute and, instead, to create a new bureaucratic layer by this act on top of the Foreign Service, modeled on the Civil Service's Senior Executive Service. Its real intent, I am afraid, is to be a device to speed up the retirement of selected officers in the overcomplement in the higher officer levels, eliminating the most experienced officers who have resisted the ideological politicization of the service. The additional safeguards which were added to protect these officers have the effect, however, only of guaranteeing tenure and, for the first time, giving foreign service officers a virtual contract of 3 to 5 years. This guarantee was reinforced by raising the mandatory retirement age to 65, an act most beneficial to the senior grades. Nothing could be more contrary to the idea of "up or out." On the one hand it rationalizes past disregard of the will of Congress, and on the other, it simply duplicates the problem which already exists, most significantly at the new supergrade levels. The Foreign Service Act of 1980 will not cure personnel management problems; indeed, it will double their magnitude.

While the bill was being considered in committee, I introduced reform legislation which attempted to go to basic issues, reinvigorate the morale of the Foreign Service by increasing rewards in recognition of its elite character, and restore the original concept of the Foreign Service by giving the Secretary and the Congress the tools to make the selection up or out process work. These reforms were proposed on the Senate floor as well as additional proposals to insure that every employee in the Foreign Service had due process in labor/management and in the grievance procedures.

Indeed, it is particularly important that certain provisions in the act relating to the handling of grievances do not remove from the Foreign Service Corps any of the protections they now have under current law.

I speak particularly of the right of any member of the Foreign Service to appear as a grievant before an independent and impartial third party. Present law and regulation provide that members of the grievance board be appointed by mutual consent of the foreign affairs agencies and their counterpart exclusive representatives. Section 1105 of the conferees bill creates, in the case of a disagreement between the agencies and the exclusive representatives over the choice of a board member, a so-called striking procedure to choose nominees—rather than the automatic veto authority of any party, as is the present situation.

This provision could be manipulated so that the management of the agencies could effectively appoint an entire grievance board solely of their own choosing, rather than a board balanced by the meaningful participation of the exclusive representatives. This danger has been carefully analyzed by the Thomas Legal Defense Fund, an organization known throughout the Foreign Service to protect the rights of the Foreign Service through the judicial process. It is unfortunate that the State Department never

identified this provision as a change from current law; the burden, therefore will be upon the Department to insure that the provision was intended, and will in actuality, operate in a balanced manner.

Similarly, another portion of the text of the bill is also open to manipulation because of an unfortunate ambiguity.

It is noteworthy that the bill states, in section 610, that—

The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 1106, and shall be in lieu of any other administrative procedure authorized or required by this or any other law.

This language may be open to an interpretation that may seriously limit a grievant's rights. For example, the language raises doubt as to whether an individual grievant in a separation-for-cause case is entitled to have the decision of the grievance board reviewed by the Equal Employment Opportunity Commission, and, where necessary, to obtain a trial de novo for the discrimination claim in district court. Both private industry and all Government agencies are subject to these statutorily-based procedures. It is to be presumed that the State Department has not been seeking congressional approval to prevent implementation of the full effect of the equal employment statutes. My proposed amendment to the grievance chapter, rejected by the Senate, would have erased any of these ambiguities.

The lack of sufficient grievance safeguards in the present bill, the duplication of a redundant labor/management bureaucracy, the failure to provide a mechanism to make the selection process work, and the complication of the Foreign Service system by the addition of the civil service-based concept of a Senior Foreign Service make this legislation a step backward. I must vote against the report in the hope that these issues may be raised again in the not-too-distant future.

Mr. PERCY. Mr. President, I urge my colleagues to support this conference report on the Foreign Service Act of 1980, H.R. 6790. It represents the culmination of several years of careful discussions within the administration and the Foreign Service, and between both of them and the Congress as a whole. Though it differs in some important respects from the civil service reform legislation approved 2 years ago, it reflects the same objective of modernizing and rationalizing the administration of the Foreign Service.

The act provides the basis for a long-overdue upgrading of pay scales within the Foreign Service, the institution of a senior Foreign Service and an incentive pay plan, the consolidation of carefully negotiated grievance and labor-management systems and numerous other changes in the administration of the Service. It also provides new protections for the families of Foreign Service members, including survivor and retirement provisions for those former spouses who served with an officer for 10 years or more.

Mr. President, as with any measure of this kind, there are some features of the legislation which some Members of the

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Senate or the House might have wished had come out differently. We in the Foreign Relations Committee will continue to monitor the implementation of this legislation carefully and will not hesitate to recommend changes as they become necessary. But on balance, I think all the parties involved in the

drafting of this legislation can be proud of the result, and I strongly recommend this conference report to the Senate.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. PELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOTICE

Incomplete record of Senate proceedings. Senate proceedings for today will be continued in the next issue of the Record.

RECESS TO 1 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order, that the Senate stand in recess until 1 p.m. today.

The motion was agreed to; and at 2:52 a.m., the Senate recessed until today, Wednesday, October 1, 1980, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate September 30, 1980:

NATIONAL RAILROAD PASSENGER CORPORATION

Charles Luna, of Texas, to be a Member of the Board of Directors of the National Railroad Passenger Corporation for a term expiring July 18, 1984 (reappointment).

MISSISSIPPI RIVER COMMISSION

Brig. Gen. Hugh Granville Robinson, 577-44-1975, U.S. Army, to be a Member of the Mississippi River Commission, under the provisions of section 2 of an Act of Congress, approved 28 June 1879 (21 Stat. 37) (33 U.S.C. 642).

IN THE NAVY

James D. Cotelingam, U.S. Naval Reserve officer, to be appointed a permanent lieutenant commander in the Medical Corps of the U.S. Navy, subject to qualification therefor as provided by law.

Lt. Commander William D. Kahl, U.S. Navy, retired, to be reappointed a temporary lieutenant commander, limited duty, from the Temporary Disability Retired list, subject to qualification therefor as provided by law.

The following-named ex-U.S. Navy officers to be appointed permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Matthew J. Cerny, Jr.

William R. Rundles.

Douglas E. Cameron, ex-U.S. Naval Reserve officer, to be appointed a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

The following-named civilian college graduates to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Lewis E. Curlee.

LaMoyné W. Hickman.

The following-named civilian college graduates to be appointed permanent commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Donald S. Chambers Hope J. Parta
Don L. Gardner William Weathers, Jr.

The following-named U.S. Navy officers to be appointed temporary commanders in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law:

Forrest O. Beaty.

Russell C. Packard.

Gerald R. Fabry.

Luis G. Estrera, Jr., civilian college graduate, to be appointed a temporary commander in the Medical Corps in the Reserve of the U.S. Navy, subject to qualification therefor as provided by law.

ENVIRONMENTAL PROTECTION AGENCY

Jeffrey G. Miller, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency, vice Marvin B. Durning, resigned.

U.S. INTERNATIONAL TRADE COMMISSION

Gardner Patterson, of the District of Columbia, to be a Member of the U.S. International Trade Commission for the remainder of the term expiring June 16, 1981, vice Italo H. Ablondi, resigned.

IN THE NAVY

Rear Adm. Richard A. Miller, U.S. Navy, to be Director of Budget and Reports in the Department of the Navy for a term of 3 years pursuant to title 10, United States Code, section 5064.

NATIONAL TRANSPORTATION SAFETY BOARD

Elwood Thomas Driver, of Virginia, to be a Member of the National Transportation Safety Board for the term expiring December 31, 1985 (reappointment).

WITHDRAWALS

Executive nominations withdrawn from the Senate September 30, 1980:

Robert E. Baldwin, of Wisconsin, to be a Member of the U.S. International Trade Commission for the remainder of the term expiring June 16, 1981, vice Italo H. Ablondi, resigned, which was sent to the Senate on November 30, 1979.

Frank T. Cary, of Connecticut, to be a Member of the Board of Directors of the U.S. Synthetic Fuels Corporation for a term of 6 years, which was sent to the Senate on September 19, 1980.